IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6.1.2005

C O R A M :

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.NO. 11256 of 2003

V.P.Kamalamma ... Petitioner

-vs-

1. Union of India
rep by the Secretary to the
Govt. of India
Dept. Of Personnel & Training
New Delhi.

2. The Central Administrative Tribunal
rep by its Principal Registrar
Principal Bench
61/35, Copernicus Marg
New Delhi 1.

3. V.K.Bawa
Joint Registrar (on promotion)
C/o. Principal Bench
Central Administrative Tribunal
61/35, Copernicus Marg
New Delhi 1.

4. N.N. Pradeep
Joint Registrar (on promotion)
C/o. Principal Bench
Central Administrative Tribunal
61/35, Copernicus Marg
New Delhi 1.

5. The Central Administrative Tribunal
Madras Bench
rep by its Registrar
Chennai 600 104.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus as stated therein.

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For Petitioner :: Mr.Karthik Rajan

For Respondents :: Mr.C.Krishnan, SCGSC
assisted by Mr.M.T.Arunan
ACGSC.

***

O R D E R

A.K. RAJAN, J.

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, calling for the records of the Central Administrative Tribunal in O.A.No.255 of 2002 dated 23.1.2003, and to quash the same and consequently to direct respondents 1 and 2 to promote the petitioner as Joint Registrar with effect from 27.2.2002 with all consequential benefits.

2. The case of the petitioner is as follows:

(i) The petitioner was originally appointed as Grade II Stenographer in Rajasthan High Court in 1970; in 1978, she was promoted as Private Secretary to the Hon'ble Judges; she was deputed as Court Officer to the Jodhpur Bench of the CAT in 1988; later on, she was transferred to the Ernakulam Bench; in 1992, she was promoted as Deputy Registrar, Madras Bench; by another Order dated 25.7.2001, her promotion as Deputy Registrar was revised from 1.4.1992; the next higher post is Joint Registrar; on 1.4.1997 one post of Joint Registrar fell vacant when Mr. Bhattacharya (Deputy Registrar) refused his promotion, it was vacant till 2000; the second vacancy arose in January, 2000 due to the promotion of one Sharma as Registrar.

(ii) As per the recruitment rules relating to Joint Registrar, the post has to be filled up from among Deputy Registrars with five years of service on the basis of selection cum seniority. The above said two vacancies were filled up with R.N.Pande and M.Ramachandran on ad hoc basis; at that time, one Diwakar Kukreti was holding the post of Joint Registrar. The petitioner was promoted as Deputy Registrar with effect from 1.4.1992, whereas R3 and R4 were promoted as Deputy Registrars from 18.5.1994 and 1.4.1993 respectively. Hence, the petitioner is senior to R3 and R4 in the post of Deputy Registrar. In August, 2001, the Departmental Promotion Committee (DPC) met for selecting the candidates for promotion to fill up four vacancies in the post of Registrars; for that the names of Diwakar Kukreti, N.Ramamoorthy, R.N.Panda and N.Ramachandran were recommended. Another meeting was held to fill up three vacancies of Joint Registrars, and the names of Bawa, Pradeep and Rajaram were recommended. When making such

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recommendations, DPC proceeded on the basis that there were three vacancies, but in fact there are only 2 vacancies, since Kukreti declined the promotion. In February 2002, Department of Personnel and Training issued revised instructions regarding the procedure to be followed for selection - DPC was to determine merit and subsequently Grade Officers as 'fit' or 'unfit'. In March 2002, Rajaram was promoted as Joint Registrar. When the new rules were issued in 2002 February, the DPC meeting held in March 2002 should have followed those rules. Instead, R1 and R2 decided to fill up the vacancies on the recommendations of the earlier DPC. As per the rules, DPC is not required to give ranking, but, it should give final recommendation as 'Outstanding', 'very good', 'good', 'average' and 'unfit', and within each grading, the seniority will determine the placement in the panel. Therefore, in giving the ranking, the DPC had committed illegality. The promotions of R3 and R4 were challenged by the petitioner in O.A.No.255 of 2002 before the Central Administrative Tribunal. But, it was dismissed. Hence, the present writ petition.

3. A Counter has been filed by the Registrar of Central Administrative Tribunal, Madras Bench, on behalf of respondents 1, 2 and 5, in which it has been stated that the issue involved in this case is regarding the year and number of vacancies and zone of consideration for promotion to the post of Joint Registrar for which the DPC met on 12.9.2001. There were three sanctioned posts of Joint Registrars. They were abolished subsequently with effect from April, 1995. But, once again they were revived in February, 1996. Thereafter, the DPC met and Diwakar Kukreti G.C.Sharma and Bhattacharjee were promoted as Joint Registrars in August, 1996. Bhattacharjee did not accept the appointment and hence his promotion was cancelled in 1997. Thus one post of Joint Registrar fell vacant since 1997. In February 2000, G.C.Sharma, Joint Registrar, was promoted as Registrar, and R.N.Panda and Ramachandran, Deputy Registrars, were appointed as Joint Registrars on ad hoc basis. No final seniority list in the cadre of Deputy Registrar had been issued. The petitioner, respondents 3 and 4 were appointed as Deputy Registrars on regular basis by Order dated 25.7.2001. DPC met in 2001 to consider promotions to the posts of Joint Registrar, and eligible persons were considered in the order of merit; since Ramamurthy, Panda and Ramachandran were appointed as Registrars their names were not considered for the post of Joint Registrar. In September, 2001, DPC met to fill up the posts of Joint Registrars. The Deputy Registrars were not considered for the post of Joint Registrars on regular basis as they had become eligible for the post of Bench Registrar and they were considered for promotion as Bench Registrar by DPC held on 9.8.2001. Therefore, Rajaram,

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Kamalamma, Pradeep, Stephen Swamidoss, Govind Ballabh, Bawa and Ajmani (Deputy Registrars) were considered for promotion as Joint Registrars, and DPC appointed Bawa, and Pradeep as Joint Registrars. The seniority list in the post of Deputy Registrar was not finalised. In the absence of final seniority list, DPC considered the names in the Order of merit communicated by the Department of Personnel and Training in the Order dated 25.7.2001 and appointed Panda and Ramachandran as Joint Registrars on ad hoc basis. In May, 2000, no DPC was convened for promotion to the cadre of Joint Registrar since the promotion orders in the feeder cadre of Deputy Registrar have not been issued till July, 2001. DPC held on 12.9.2001 considered and recommended Bawa, Pradeep and Rajaram to be appointed as Joint Registrars on the basis of merit. Since there were only two vacancies, the first two candidates were appointed as Joint Registrars. DPC met on 12.9.2001 to consider appointment to the posts of Joint Registrar, therefore the Communication dated 8.2.2002 issued by the Government of India is not applicable in the present case. Hence, the writ petition is to be dismissed.

4. The contention of the petitioner is that she completed five years as Deputy Registrar and became eligible for next promotion as Joint Registrar in the year 1997. Therefore, for the vacancy which arose in the year 1997, had the panel been prepared in the year 1997 itself, the petitioner would have been selected and appointed as Joint Registrar. The Tribunal, which considered this aspect, has held that Bhattacharjee when promoted did not join that post, but, retired on attaining super-annuation on 31.12.1997, therefore, no vacancy in the cadre of Joint Registrar had arisen in the year 1997. Since the Order of promotion issued to Bhattacharjee was not cancelled, the Tribunal held that the contention that there was a vacancy in the year 1997 was without any basis. The Tribunal further observed that the applicant could only aspire to be considered for promotion to the rank of Joint Registrar during 1998 and 1999. But, no DPC meeting was held in 1998 and 1999; only in 2000 the meeting was held. On that date, the revised Rules relating to the promotion were followed; and as per the petitioner's merit she was placed at No.8 in the Order published in 1997. The Tribunal held that in view of the Note 2 to the Recruitment Rules, the claim of the petitioner was to be rejected.

5. The case of the petitioner was that had the year-wise panel been prepared in 1997, R3 and R4 would not have come within the zone of consideration. Further, when the vacancy arose in the year 1998, the panel should have been prepared to fill up the post of the Joint Registrar. As per the relevant Rules, the panel for promotion shall be

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prepared for every year when there was a vacancy. May be that promotions were not made immediately. Since a vacancy had arisen in June, 1998, the panel should have been prepared to fill up the post in the year when the vacancy had arisen. If such a panel had been prepared in 1998, the petitioner would have been qualified to be included in the panel since there were no adverse remarks against her nor any enquiry was pending against her. Since DPC did not meet till 2000, no year-wise panel was not prepared either for 1998 or for 1999. Only in 2000, a panel was prepared and in that the petitioner, in view of ACR Report, the petitioner became less meritorious viz-a-viz R3 and R4. On the other hand, had the panel been prepared in the year 1998 itself - the petitioner would have become eligible; R3 would become eligible only in the year 1999 and R4 would become eligible in the year 1998.

6. The learned counsel for the petitioner has submitted a copy of literary title Nabhi's Reference for Central Government Employees. It contains the method which has to be adopted for preparing panels when the DPC does not meet every year: It is as follows:

> "Yearwise Panels to be prepared when DPC does not meet every year
>
> Where a DPC could not be held in a year(s), the first DPC that meets thereafter shall follow the following procedure:
>
> (i) Vacancies will be determined yearwise, starting from the earliest year.
>
> (ii) For vacancies of each year, the persons who would have been in consideration zone for the vacancies of that year will only be considered, as if DPC consideration took place in time.
>
> (iii) the ACRs which would have been consulted had the DPC consideration been held in time, will only be consulted.
>
> (iv) Prepare a select list yearwise placing the select list of the earlier year above the one for the next year and so on.
>
> (v) Though the vacancies belong to previous years, promotion will be only prospective."

Relying upon this, the learned counsel for the petitioner submitted that the vacancy will be determined yearwise, starting from the earliest year. For vacancies of each year, the persons who would have been in zone of consideration could only be considered, as if DPC consideration took place in time, and such a panel or select list shall be prepared year-wise; but, at the same time for a vacancy of the previous year, when promotions are given, that would only be prospective. Relying upon this, the learned counsel submitted that the panel should have

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been prepared in the year when the vacancy had arisen.

7. The petitioner also referred to the judgment of the Supreme Court in SADASIVA RAO v.. SECRETARY, MINISTRYOF DEFENCE [2003 SCC (L&S) 1175]. In that case also, vacancies arising during several years have been considered together notwithstanding the ordinary practice of having a select list for every year in respect of the vacancies arising for that year. The Supreme Court in that case has held as follows:

> "On the conceded position that the panel had not been prepared yearwise as is required under para 4 (b) of OM dated 24.12.1980 in case where for reasons beyond the control of DPC it could not have been held beyond a particular year even though vacancies arising during that year were available, the Tribunal rightly interfered with the seniority list drawn up and directed to redraw the seniority list in consonance with the provisions contained in para 4(b) of OM dated 24.12.1980.
>
> In the aforesaid premises, we see no infirmity with the impugned direction of the Tribunal so as to be interfered with by this Court under Article 136 of the Constitution of India."

8. In another case UNION OF INDIA v.. N.R. BANERJEE [(1997) 9 SCC 287] the Supreme Court has held that when there was a delay in convening of Departmental Promotion committee and when such a delay in convening of DPC the candidates who became eligible subsequently on the date of DPC, should not be taken into consideration. In that case, the Supreme Court has observed as follows -

> " The question in this case was the year up to which the DPC should have considered, the eligible candidates and the year up to which the DPC should have taken into consideration the ACRs of the candidates, for preparing panel for the year 1994-95 for promotion as Senior General manager in the Indian Ordnance Factories. Four members of the Ordnance Factory Board were to retire in August, September, October, 1994 and March, 1995. The Board initiated action on 22.12.1993 and after completing the process of consultation with the UPSC, selected candidates joined as members of the Board on 22.8.1994, 3.9.1994, 6.10.1994 and 1.3.1995. The DPC for filling up of the resultant four vacancies was held on 15.3.1995. The Central Administrative Tribunal held that only those candidates were to be considered for promotion who were eligible up to March 1993 and ACRs for the year 1994 should not have been taken into

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consideration by the DPC. The Union of India contended that crucial date for DPC meeting for selection should be April or May 1995."

In that case, the vacancies which arose in October 1994 and March 1995 were clear vacancies and they were to be finalised before April 1994 and all eligible candidates within the zone of consideration as on that date were entitled to be considered. When such a direction was issued by the Tribunal, it was upheld by the Supreme Court and the Supreme Court did not interfere with such a direction. The Supreme court in that case has also held that the preparation of panel every year was a mandatory requirement unless the appointing authority certified about the non availability of vacancy or eligible candidates. Therefore, in the present case, the panel should have been prepared in the year 1998 itself. Non-preparation of such panel had deprived the petitioner of her valuable right.

9. The contention of the petitioner is that the panel should have been prepared in the year 1997 itself. But, as per the counter affidavit there was no vacancy in the cadre of Joint Registrar in 1997; Bhattacharjee did not join in the promoted post of Registrar; therefore there was no vacancy in the post of Joint Registrar in 1997. The post of Joint Registrar fell vacant only on the super-annuation of Bhattacharjee on 31.12.1997. Therefore, the next panel for promotion as Joint Registrar could have been prepared in the year 1998.

10. Mr. C.Krishnan, learned Senior Central Government Standing Counsel, appearing for respondents 1, 2 and 5 submitted that the revised seniority list was published only in 2001; before that there was no seniority list. As per the earlier seniority list, the petitioner was junior to R3 and R4, and therefore, even if the panel had been prepared in the year 1997 or 1998, the petitioner would not have been included in that panel as she was junior to R3 and R4. This argument of the learned Counsel for respondents is not acceptable. If a panel had been prepared in 1997 or 1998 and if the petitioner was not empanelled due to the mistake in the seniority list maintained, the petitioner could have and would have challenged the seniority itself. The non-preparation of the panel year-wise is a violation of the Service Rules. The authorities are bound to prepare a panel year-wise when there were vacancies.

11. In cases where direct recruitment is made, they are initially appointed on probation. On completion of probation a Certificate of satisfactory completion of probation shall be given. But, this rule is also followed only in its breach. Though there are provisions in some

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rules that even if no certificate of satisfactory completion is issued after some specified period, the probationer deemed to have completed the probation satisfactorily. Even, in those circumstances, the Supreme Court has held that an Order of satisfactory completion of probation shall be issued. But, the authorities who have the responsibility of declaring satisfactory completion of probation do not discharge this responsibility for reasons best known to them. This is not a healthy atmosphere and this will only breed dissatisfaction amongst the subordinates. After completion of probation, the seniority of such persons shall be determined and the seniority list shall be published.

12. It is very unfortunate that very often than not, seniority list is not prepared and published promptly, in most of the departments. The authority, which has the responsibility to fix the seniority of the employees do not consider it as a duty that has to be performed promptly. The employees are under the mercy of the superiors to know their position in the cadre of service. This results in nepotism and arbitrariness, which also create restlessness among the employees. In spite of the fact that the honourable Supreme Court and the High Courts repeatedly pull up the erring Officers and point out that seniority list shall be prepared and published in time, such directions were ignored by the authorities; the cry of the subordinates for fixation of seniority vanished as a voice in the wilderness. The reason for this malady is that there is no action or sanction for such inaction. Unless punitive action is taken against such erring Officers, this would continue.

13. Declaration of probation and publication or preparation of seniority list is neither a charity nor a gratuity by the superiors. It is an invaluable right of the individuals. Wherever the necessity arises, the seniority list shall be published every year. If that is not required for valid reasons, at least once in two years the seniority list of all the cadres in services shall be published. If such lists are published periodically, it would go a long way to prevent arbitrariness and denial of promotion in time.

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14. In this case, since no seniority list was maintained, it resulted in promoting the juniors, in violation of the Service Rules. Further, the rules for promotion in the year when vacancy arose should be followed. The panel for promotion was not prepared in 1998, 1999, when there were vacancies. The amended rules which came into existence in 2001 have been applied for promotion to a vacancy which arose in 1998. That is also not legal. The Panel for the year 1998 should have been prepared and the

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promotion should have been given as per the rules that were in force in 1998.

15. For the reasons stated above, the Order of the Tribunal is not legally sustainable. It is contrary to the decisions of the Supreme Court referred above and hence it is liable to be set aside, and hence set aside.

16. Therefore, respondents 1 and 2 are directed to prepare the panel for promotion year-wise (for 1998, 1999 and 2000) to the cadre of Joint Registrar and give promotion to the eligible persons as per the Rules that were in force in those years. That shall be done within one month from the date of receipt of a copy of the Order.

17. In the result, the Order passed by the Tribunal is quashed. The writ petition is allowed with the above direction. No costs. Consequently, WPMP No.14109/03 is closed.

This petition having been posted on this day for being mentioned in pursuance to the order of this Court dated 6.1.2005 and made herein in the presence of the aforesaid Advocate, the Court made the following Order:

The matter is posted today for being mentioned.

2. The learned counsel for the petitioner submitted that Mr.Bhattacharjee when promoted as Joint Registrar, refused to accept that promotion and hence his promotion was cancelled by Order dated 1.4.1997. It is also referred to in para 3 of the original judgment that "he did not accept the appointment and hence his promotion was cancelled in 1997". But, the Tribunal mistakenly has held that Bhattacharjee did not join as Joint Registrar and his promotion was not cancelled and he retired on attaining superannuation on 31.12.1997. On that basis, this Court has held that there was no vacancy in the post of Joint Registrar prior to 31.12.1997. It is factually inadvertent error, which has to be rectified.

3. The learned counsel for the petitioner also contended that when vacancy had arisen on 1.4.1997, the panel should be prepared for 1997 also. As per the Rules – G.I.Dept., Per. & Trg., OM No.22011/5/86-Estt.(D), dated 27.3.1990 - the crucial date for determining eligibility is prescribed as:

(i) 1st July of the year in cases where ACRs are written calendar-wise; and

(ii) 1st October of the year where ACRs are written financial yearwise.

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Therefore, the panel should be prepared for the year 1997 for the vacancy in the post of Joint Registrar.

4. The learned counsel for the respondents is present today and he also accepts that the appointment of Bhattacharjee was cancelled by Order dated 1.4.1997.

5. The learned counsel for the petitioner now produces the copy of the Order dated 1.4.1997, whereby the appointment of Bhattarcharjee as Joint Registrar was cancelled. The order runs as follows:

> "The president is pleased to cancel the offer of appointment of Shri J.M.Bhattacharjee, Dy.Registrar, Central Administrative Tribunal, Calcutta Bench for the post of Joint Registrar, CAT, Mumbai Bench made vide this Ministry's Order of even number dated 27.08.1996."

6. This document was not filed either before the Tribunal or before this Court earlier. Under those circumstances, this Court was under the view that on facts what was stated by the Tribunal was correct and therefore it was held that there was no vacancy in the year 1997 in the post of Joint Registrar. Inasmuch as it is seen that the appointment of Bhattacharjee was cancelled on 1.4.1997, the factual mistake has to be corrected.

7. Therefore, in para 4 of the original judgment, the passage beginning from "Since ....." and ending "..... during 1998 and 1999" be deleted and in its place, the following sentences may be substituted:

> "The conclusion of the Tribunal that there was no vacancy in the cadre of Joint Registrar had arisen in the year 1997, is factually incorrect. By Order dated 1.4.1997, the appointment of Bhattacharjee has been cancelled. Therefore, a vacancy had arisen on 1.4.1997. As per the Official Memorandum dated 27.3.1990 [referred to above] the crucial date for preparation of panel is 1.7.1997 (because ACRs are written calendar-wise). Therefore, on 1.7.1997 the panel should have been prepared for promotion to the rank of Joint Registrar."

8. In para-5, in the sentence "Further, when the vacancy arose in the year 1998, the panel should have been prepared to fill up the post of the Joint Registrar.", the figure '1998' shall be substituted by '1997'. Moreover, in para 5 wherever the figure '1998' is found, be substituted as '1997'.

9. Paragraph 9 shall be deleted and the following paragraph may be substituted:

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"9. The contention of the petitioner is that the panel should have been prepared in the year 1997 itself. Inasmuch as the vacancy had arisen on 1.4.1997 in the post of Joint Registrar, the panel should have been prepared for promotion as Joint Registrar for the year 1997."

10. In para-14, in the sentence "The panel for promotion was not prepared in 1998, 1999, when there were vacancies.", “1997” may be added before “1998”.

11. In para-16, the figure “1997” may be added before “1998”.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

pb

To
1. The Secretary to the Govt.
Union of India
Dept. Of Personnel & Training
New Delhi.

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5. The Registrar,
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Madras Bench
Chennai 600 104.
+ 1 CC to Mr.R.Parthiban, Advocate SR NO 1126
+ 2 Ccs to Mr.M.T.Arunan, Advocate SR NO 1108

WP No.11256 of 2003
20.1.2005

RA(CO)
GP

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